

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RAFIC SAADEH,

Plaintiff,

-v-

MICHAEL KAGAN, et al.,

Defendants.

20 Civ. 1945 (PAE)

ORDER

PAUL A. ENGELMAYER, District Judge:

The Court has received a letter from counsel for plaintiff Rafic Saadeh stating that Mr. Saadeh has elected not to attend the jury trial that will begin on Monday, November 13, 2023, on the claims that Mr. Saadeh has brought against Michael Kagan and Joshua Kagan. Dkt. 306.

As Mr. Saadeh's letter recognizes, there are implications to this decision. The Court has ordered that, although Mr. Saadeh is of course at liberty not to testify on his own case, he must be available to testify if called to do so by defendant Michael Kagan, who has stated that he intends to defend this case and that he presently expects to call Mr. Saadeh on his defense case. *See* Dkt. 296, 305 (Court's orders); Dkts. 298, 303 (letters from Michael Kagan). In light of Mr. Saadeh's decision not to attend trial, the Court, provided that Michael Kagan appears at trial on Monday morning, November 13, 2023, will dismiss Mr. Saadeh's remaining claim against Michael Kagan, for actual fraudulent conveyance. *See* Dkt. 306 (acknowledging that the effect of Mr. Saadeh's non-appearance, given the Court's ruling that he must appear should he wish to pursue his claim against Michael Kagan, will be the preclusion of that claim). The Court will do so at the pretrial conference that will be held at 9 a.m. Monday morning, November 13, 2023, immediately before jury selection. The Court notes that Mr. Saadeh disputes that he has relevant

testimony to offer on his claim against Michael Kagan. *Id.* At the conference Monday morning, the Court will put on the record its bases for finding otherwise.

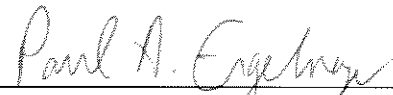
For avoidance of doubt, this ruling does not affect Mr. Saadeh's claims against Joshua Kagan. Joshua Kagan has stated that he does not intend to call Mr. Saadeh as a witness on these claims. As such, Mr. Saadeh's presence is not necessary for the fair litigation of those claims.

The Court orders that Michael Kagan be present for the conference at 9 a.m. on Monday, November 13, 2023. The Court further orders that Michael Kagan be available to be called as a witness at trial on the claims against Joshua Kagan, as to which he is a necessary witness.

In light, however, of the anticipated dismissal of Mr. Saadeh's claim against Michael, there is no need for the conference scheduled for Thursday, November 9, 2023, at 11:30 a.m. to go forward. The sole agenda for that conference was for the Court to advise Michael Kagan on his responsibilities representing himself *pro se*, a role he will no longer have with the dismissal of the claim against him.

Following the trial, the Court will enter judgment in this case, both as to the claims resolved or disposed of prior to trial, including on summary judgment, and as to the claims against Joshua Kagan that will be litigated at trial.

SO ORDERED.



PAUL A. ENGELMAYER
United States District Judge

Dated: November 8, 2023
New York, New York